

## HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

1. In Spring of 2007, the petitioner was providing respite care in his home to a fourteen-year-old boy who was a foster child in DCF custody. During that time the petitioner posted bail for an adult who the petitioner knew had been charged with and was awaiting trial for sexual assault. The petitioner alleges that he did not believe the sexual assault charge against the adult was true.

2. The petitioner invited this adult to stay in his home. He directed the foster child to vacate his room so the adult could stay there. The foster child moved to another room in the house.

3. A short time after the adult moved in, the petitioner allowed the foster child to go into a room with the adult unsupervised to listen to music. The petitioner admits that "within minutes" the child came running out of the room and said "he touched me".

4. The petitioner admits that although he is a mandatory reporter of suspected child abuse he did not report the incident. He states that he had been told that the child "makes up stories" and that he did not believe the child. He states that the child later wanted to spend time with the adult. He states that he told the child to report the incident himself to his foster home care provider because he did not feel the charges were "serious enough" for him to report and risk sending the adult back to jail.

5. The child reported the incident to his foster home provider a few days later. The petitioner essentially admitted the above events to a DCF investigator, who interviewed him a few days later.

6. The petitioner admits that the adult in question has pleaded guilty to child sexual abuse charges stemming from this incident. However, the petitioner testified that he still does not believe that the incident occurred.

7. Based on all of the evidence above it is concluded that the petitioner's actions and omissions were grossly negligent in placing a child in his care at risk of sexual abuse.

#### ORDER

The Department's decision substantiating the report that the petitioner placed the child at risk of sexual abuse is affirmed.

#### REASONS

The Vermont legislature has adopted laws to "protect children whose health and welfare may be adversely affected through abuse and neglect" by any "person responsible for a child's welfare" while "in a residential, education or day care setting, including any staff person." 33 V.S.A. §§ 4911 and 4912(5). To this end, the legislature requires DCF to investigate reports of child abuse or neglect and to maintain a registry with the names and records of those who are determined to have a "substantiated" finding of abuse or

neglect. 33 V.S.A. § 4913 and 4916. A report is substantiated when it is "based upon accurate and reliable information that would lead a reasonable person to believe that the child has been abused or neglected." 33 V.S.A. § 4912(10).

Any person against whom a report of abuse is substantiated by DCF may appeal to the Human Services Board. Under the statutory provisions, the burden of proof is on the Department. 33 V.S.A. § 4916a(e).

The statutory sections relied upon by DCF in this matter include the following:

(2) An "abused or neglected child" means a child whose physical health, psychological growth and development or welfare is harmed or is at substantial risk of harm by the acts or omissions of his or her parent or other person responsible for the child's welfare. An "abused or neglected child" also means a child who is sexually abused or at substantial risk of sexual abuse by any person.

(4) "Risk of harm" means a significant danger that a child will suffer serious harm other than by accidental means, which harm would be likely to cause physical injury, neglect, emotional maltreatment or sexual abuse.

(8) "Sexual abuse" consists of any act or acts by any person involving sexual molestation or exploitation of a child including but not limited to incest, prostitution, rape, sodomy, or any lewd and lascivious conduct involving a child. Sexual abuse also includes the aiding, abetting, counseling, hiring, or procuring of a child to perform or participate in any photograph,

motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts a sexual conduct, sexual excitement or sadomasochistic abuse involving a child.

33 V.S.A. § 4912 (Emphasis added.)

The Board has observed that there can be no doubt from the context and language in the statutes cited above that the Vermont legislature was trying to protect children from persons who would expose them to harm, and it has held that there is nothing in the statute that would restrict protecting children from harm caused by intentional actions only. See Fair Hearing No. 17,588. In this case, the petitioner's grossly negligent acts and omissions, and his stunningly cavalier attitude described above clearly fall within the above definitions. Accordingly, the Department's decision must be affirmed.

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